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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 VICTOR MANUEL DIAZ,
11 Petitioner,
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13 v.
14 M.D. BITER, Warden,
15 Respondent.
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Case No. CV 11-7871 PA (JCG)

**ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE AND
DENYING CERTIFICATE OF
APPEALABILITY**

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the Magistrate
18 Judge's Report and Recommendation, Petitioner's Objections to the Report and
19 Recommendation, and the remaining record, and has made a *de novo* determination.

20 Petitioner's Objections generally reiterate the arguments made in the Petition
21 and Reply, and lack merit for the reasons set forth in the Report and Recommendation.

22 Furthermore, to the extent that Petitioner's Objections include a request for an
23 evidentiary hearing, Petitioner's request is denied. *See Cullen v. Pinholster*, 131 S. Ct.
24 1388, 1398 (2011); *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("[I]f the record
25 refutes the applicant's factual allegations or otherwise precludes habeas relief, a district
26 court is not required to hold an evidentiary hearing.").

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1 Accordingly, IT IS ORDERED THAT:

- 2 1. The Report and Recommendation is approved and accepted;
- 3 2. Judgment be entered denying the Petition and dismissing this action with
- 4 prejudice; and
- 5 3. The Clerk serve copies of this Order on the parties.

6 Additionally, for the reasons stated in the Report and Recommendation, the

7 Court finds that Petitioner has not made a substantial showing of the denial of a

8 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*

9 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of

10 appealability.

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12 DATED: _October 24, 2013



14 HON. PERCY ANDERSON

15 UNITED STATES DISTRICT JUDGE

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